



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

Via Certified Mail

November 23, 2009

Gwendolyn W. Burrell
Executive Director
Department of Crime Control and Public Safety
North Carolina Governor's Crime Commission
1201 Front Street, Suite 200
Raleigh, North Carolina 27609

Re: North Carolina Department of Crime Control and Public Safety,
Governor's Crime Commission (09-OCR-0274)

Dear Executive Director Burrell:

On June 18, 2007, the Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) initiated a compliance review of all State Administering Agencies, including the North Carolina Governor's Crime Commission (GCC), a division of the North Carolina Department of Crime Control and Public Safety (NCDCCPS), in accordance with federal regulation 28 C.F.R. § 42.206. The focus of the review was on the GCC's compliance with applicable federal civil rights laws along with the GCC's monitoring procedures for ensuring the compliance of subrecipients with these laws. Of particular interest to the OCR was the GCC's implementation and monitoring of the DOJ's regulations, Equal Treatment for Faith-Based Organizations, 28 C.F.R. pt. 38 [hereinafter Equal Treatment Regulations or ETRs].

On July 1, 2009, the OCR conducted an onsite visit to the offices of the GCC in Raleigh, North Carolina to interview GCC administrators and to conduct a training program for GCC administrators and program staff on the federal civil rights laws that the OCR enforces. The OCR also met with the executive directors, program staff, and program beneficiaries of two faith-based subrecipients of the GCC: (1) Safer Communities Ministry, for which its Second Chance Reentry Network (SCREEN) program received DOJ funding from July 1, 2007, to June 30, 2009; and (2) Higher Level Missions, Inc., for which its Cabarrus Reentry Initiative program

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has received DOJ funding since July 1, 2007, and has been awarded funds through July 30, 2011. The OCR would like to thank you, Acting Deputy Director Barry Bryant, Grants Management Director Wes Walters, and Grants Manager Melvin Williams for graciously assisting OCR attorney Kimberly Scheckner during her onsite visit and throughout the course of this review.

Based on the GCC's responses to our data request and the information that the OCR gathered during and subsequent to our onsite visit, the OCR sent the GCC a draft Compliance Review Report on October 15, 29, 2008. In a letter dated November 12, 2009, the GCC responded with minor factual corrections to the OCR's draft Compliance Review Report that have been incorporated into this final Report.

In regard to the limited scope of our review, the OCR concludes that the GCC has taken steps to comply with the federal civil rights laws that the OCR enforces. Nonetheless, we have reservations about whether the GCC has adequate complaint procedures in place to respond to discrimination complaints from employees and beneficiaries of subrecipients and whether it is sufficiently monitoring, training, and educating its subrecipients on applicable federal civil rights laws. The following Compliance Review Report includes recommendations for improving the GCC'S methods for monitoring the civil rights compliance of subrecipients. The OCR will issue a report regarding SCREEN and the Cabarrus Reentry Initiative under separate cover at a later date.

Compliance Review Report: Overview and Recommendations

I. Overview

This Compliance Review Report examines the GCC's procedures for monitoring whether subrecipients are meeting their obligations to comply with the federal civil rights laws that are a condition for receiving federal financial assistance. The Report then focuses on the GCC's implementation of the DOJ's Equal Treatment Regulations.

A. General Monitoring Procedures to Ensure Subrecipient Compliance with Applicable Federal Civil Rights Laws

Recipients of federal financial assistance from the OJP are responsible for certifying that contractors and subrecipients under DOJ grant programs comply with applicable federal civil rights laws. In reviewing the GCC's general efforts to ensure subrecipients' compliance with their civil rights obligations, the OCR examined how the GCC used the following four tools: (1) standard assurances; (2) onsite visits and other monitoring methods; (3) training programs and technical assistance; and (4) procedures for receiving, investigating, and resolving complaints alleging discrimination in the delivery of services.

1. Standard Assurances

Grant administrators located within the GCC's offices are responsible for administering GCC grants, including DOJ subawards. Before the GCC releases DOJ funds, subrecipients must sign a "Standard Grant Conditions Agreement," which contains the following language regarding civil rights laws:

II. Pre-Award Requirements

A. Application Process

Certified Assurances (Non-Discrimination Requirements)

Applicants must assure and certify that they comply, and assure the compliance of their subrecipients, with all applicable civil rights nondiscrimination requirements as set forth on the OJP Assurances Form 4000/3.¹

In the event that a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, national origin, sex, or disability against a recipient of Federal funds, or any subgrantee or contractor of that recipient, a copy of such findings must be forwarded immediately to the Governor's Crime Commission.²

All recipients and their subrecipients must also provide the Office for Civil rights with an Equal Opportunity Plan, if required to maintain one, where the award is \$500,000 or more.

The Subgrantee further agrees to post in a conspicuous place, available to all employees and applicants for employment, notices setting forth the provisions of the EEOP, as supplemented in the Department of Labor Regulations 41 CFR Part 60.

(Standard Grant Conditions Agreement, at 5.) Also as part of the application process, applicants must certify that they "ha[ve] formulated an Equal Opportunity Program . . . in accordance with

1 Subsequent to the onsite visit, the GCC confirmed that it has borrowed this language from the certified assurances that are referenced on the OJP website at <http://www.ojp.gov/financialguide/part2/part2chap1.htm>. Neither the GCC's language nor the web page to which the applicant is directed lists the applicable federal statutes and their implementing regulations, however.

2 This document does not require subrecipients to forward any such findings of discrimination to the OCR, however.

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the Amended Equal Employment Opportunity Guidelines 28 C.F.R. 42.301, et seq., Subpart E, and that it is on file . . . for review and audit by officials of the Department of Crime Control and Public Safety or the Office of Justice Programs as required by relevant law and regulations.” Alternatively, applicants may certify “that the Amended Equal Employment Guidelines have been read (28 C.F.R. 42.301, et seq., Subpart E) and that no Equal Employment Opportunity Program is required to be filed by the implementing agency.”³ (2007 Grant PreApplication at 10.)

During the onsite visit, then-Deputy Director Burrell explained that the Standard Grant Conditions Agreement is used when making all subawards and that once approved for funding, the applicant must further agree to abide by the assurances set forth in a “Special Conditions Letter,” which becomes part of the award agreement. Included with its response to the OCR’s data request, the GCC provided the OCR with an Edward Byrne Memorial Justice Assistance Grant (JAG) Recovery Act Special Conditions letter that contains the following language pertinent to civil rights laws:

2. The recipient acknowledges that failure to submit an acceptable Equal Employment Opportunity Plan (if recipient is required to submit one pursuant to 28 C.F.R. Section 42.302), that is approved by the Office for Civil Rights, is a violation of its Certified Assurances and may result in suspension or termination of funding, until such time as the recipient is in compliance.

* * *

5. RECOVERY ACT - Conflict with Other Standard Terms and Conditions:

The recipient understands and agrees that all other terms and conditions contained in this award, or in applicable OJP grant policy statements or guidance, apply unless they conflict or are superseded by the terms and conditions included here that specifically implement the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (“ARRA” or “Recovery Act”) requirements. Recipients are responsible for contracting their grants managers for any needed clarifications.

* * *

10. The grantee agrees to comply with the applicable requirements of 28 C.F.R. Part 38, the Department of Justice regulation governing “Equal Treatment for Faith-Based Organizations” (the “Equal Treatment Regulation”). The Equal Treatment Regulation provided in part that Department of Justice grant awards of direct funding may not be

³ Subrecipients are not, however, notified in this document that they must submit to the OCR either an EEOP or the OJP’s Certification Form stating that they are eligible for a full or partial exemption from the EEOP requirement.

used to fund any inherently religious activities, such as worship, religious instruction, or proselytization. Recipients of direct grants may still engage in inherently religious activities, but such activities must be separate in time or place from the Department of Justice funded program, and participation in such activities by individuals receiving services from grantee or a sub-grantee must be voluntary. The Equal Treatment Regulation also makes clear that organizations participating in programs directly funded by the Department of Justice are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion. Notwithstanding any other special condition of this award, faith-based organizations may, in some circumstances, consider religion as a basis for employment. See http://www.ojp.gov/about/ocr/equal_fbo.htm.⁴

16. RECOVERY ACT - Subawards - Monitoring

The Recipient agrees to monitor subawards under this Recovery Act award in accordance with all applicable statutes, regulations, OMB circulars, and guidelines, including the OJP Financial Guide, and to include the applicable conditions of this award in any subaward. The recipient is responsible for oversight of subrecipient spending and monitoring of specific outcomes and benefits attributable to use of Recovery Act funds by subrecipients. The recipient agrees to submit, upon request, documentation of its policies and procedures for monitoring of subawards under this award.

(FY 2009 Special Conditions Letter, Byrne JAG Recovery Act Funding at 1-3.)

Then-Deputy Director Burrell further explained during the onsite visit that the above assurances will be included in all Special Conditions letters, with minor variations depending on the particular grant program. Subsequent to the OCR's onsite visit, the GCC supplied the OCR with additional FY 2009 Special Conditions letters for JAG, Violence Against Women Act, and Victims of Crime Act grant recipients. Each of these letters contain the above-quoted language concerning Equal Employment Opportunity Plans. The JAG and VAWA letters also contain the above-quoted language concerning the Equal Treatment Regulations; the VOCA Special Conditions letters, however, do not. There is also some variation among the letters in regard to grantees' obligations to abide by the various applicable civil rights requirements. For example, a Special Conditions letter for grantees in receipt of VAWA funding includes the following assurance:

⁴ The GCC should consider providing an additional link to the website of the DOJ Task Force for Faith-Based and Community Initiatives, <http://www.usdoj.gov/archive/fbci/index.html>, which includes information on the limited circumstances under which faith-based organizations may make hiring decisions on the basis of religious belief.

7. The recipient agrees to comply with all relevant statutory and regulatory requirements which may include, among other relevant authorities, the Violence Against Women Act of 1994, P.L. 102-322, the Violence Against Women Act of 2000, P.L. 105-386, the Omnibus Crime Control and Safe Streets Act of 1968, 42, U.S.C. 3711 et seq., the Violence Against Women and Department Reauthorization Act of 2005, P.L. 109-162, and OVW's implementing regulations at 28 CFR Part 30.⁵

(FY 2009 Special Conditions Letter, VAWA Funding at 2.) Only the Special Conditions letter for VOCA funding includes the following assurance concerning findings of discrimination:

10. Discrimination Findings

The recipient assures that in the event that a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the ground of race, religion, national origin, sex, or disability against a recipient of victim assistance formula funds under this award, the recipient will forward a copy of the findings to both the Office of Civil Rights of OJP and the Governor's Crime Commission.⁶

(FY 2009 Special Conditions Letter, VOCA Funding at 2.)

2. Onsite Visits and Other Monitoring Methods

During the OCR's onsite visit, GCC administrators explained that the GCC monitors its subrecipients by requiring quarterly progress and financial reports and by conducting annual onsite visits. In its data request response, the GCC provided the OCR with a "Grants Monitoring Site Visit Worksheet" that grant administrators use during onsite visits. This worksheet contains a "Financial Records Review Checklist," which includes a section on "Use of Grant Funds," as well as a section on "Program Operation," but neither of these sections contain any information relating to the monitoring of civil rights compliance; that is, the worksheet does not ask for the contact information of the person responsible for submitting findings of discrimination to the OCR; it does not ask whether a Federal or State court or administrative agency has issued a finding of discrimination against the subrecipient during the last three years on the grounds of race, color, national origin, age, sex, religion, or disability; it does not ask whether the

⁵ The GCC should review and, as necessary, edit all of the legal citations currently referenced in its grant documents to reflect the correct legal citations contained in the OJP's Standard Assurances, which we have enclosed for your review; see also Section II.B. of this Report, which contains an excerpt from the enclosed document.

⁶ This Special Conditions letter, unlike the above-referenced Standard Grant Conditions document, requires notification to the OCR. Please note, however, that the correct name of the office is the Office for Civil Rights.

subrecipient has submitted an EEOP or an EEOP certification form to the OCR; nor does it reflect whether the subrecipient needs or has requested any training or technical assistance regarding its duties to comply with applicable civil rights laws.

3. Training and Technical Assistance

In its data request response, the GCC stated that it provides training to grant recipients on the information in the above-referenced Standard Grant Conditions Agreement during its annual Grant Award Workshop. The 2008 Grant Writing Workshop presentation forwarded to the OCR by a grant manager subsequent to the OCR's onsite visit, however, does not include reference to the civil rights requirements of subrecipients. Beyond its annual workshops, the GCC has no other formal programs in place for providing training to subrecipients on the applicable civil rights laws.

4. Complaint Procedures

During the OCR's onsite visit, a GCC grant administrator explained that the GCC has policies in place to address employment discrimination and harassment complaints from GCC employees, but that these policies do not address discrimination complaints from employees or beneficiaries of subrecipients. The grant administrator further explained that it expects subrecipients to have complaint procedures regarding the handling of employment and services complaints they receive; subsequent to the onsite visit, the GCC informed the OCR that it is currently developing a policy for determining whether such policies exist.

As discussed in Section I.A.1 of this Compliance Review Report, written notice is provided to subrecipients in the Standard Grant Conditions Agreement that in the event that a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, national origin, sex, or disability against a recipient of Federal funds, or any subgrantee or contractor of that recipient, a copy of such findings must be forwarded to the GCC. As noted above, however, depending on which version of the Special Conditions letter the grantee receives, only some grantees are advised that any such findings of discrimination are to be forwarded to the OCR.

Based on the OCR's research, it appears that the Civil Rights Division of the North Carolina Office of Administrative Hearings (OAH) investigates complaints alleging discrimination on the basis of race, color, sex, religion, age, national origin or disability in employment, or charges alleging retaliation for opposition to such discrimination brought by previous and current state employees or applicants for employment for positions covered by the State Personnel Act. Employees alleging employment discrimination may file their complaints directly with the Civil Rights Division without exhausting in-house or agency grievance procedures. Accordingly, it appears that the employees of GCC may file discrimination complaints with the OAH directly; they may also file a charge of discrimination directly with the Equal Employment Opportunity Commission (EEOC). It appears, however, that employees of GCC subrecipients and their

beneficiaries who are not current or former state or county government employees may not file discrimination complaints with the OAH.

Further research by the OCR indicates that the North Carolina Human Relations Commission (NCHRC) provides outreach, advice, and referrals for employment and public accommodations complaints; the NCHRC does not, however, appear to have enforcement responsibilities beyond the antidiscrimination laws relating to housing discrimination. Accordingly, it appears that GCC employees and the employees and beneficiaries of GCC subrecipients may register non-housing discrimination complaints with the NCHRC, but that those complaints will not be processed by that agency; rather, they would be referred out to other state agencies, nonprofits, or in some cases, lawyer referral services located through the North Carolina State Bar.

B. Monitoring Compliance with Faith-Based Regulations

The purpose of the Equal Treatment Regulations is to ensure that “[r]eligious organizations are eligible, on the same basis as any other organization, to participate in any [Justice] Department program for which they are otherwise eligible.” 28 C.F.R. § 38.1(a). The Regulations prohibit the DOJ and DOJ funding recipients from discriminating either for or against an organization on the basis of the organization's religious character or affiliation. *Id.*

1. The Process for Making Awards to Applicant Faith-Based Organizations

During the OCR's onsite visit, GCC administrators confirmed that the GCC administers the following DOJ grant programs: the JAG Program; programs authorized by VOCA, VAWA, the Juvenile Justice and Delinquency Prevention Act (Title II), the Children's Justice Act, and the Juvenile Accountability Block Grant, as well as the Title V Community Prevention Program, the National Criminal History Improvement Program, and the Residential Substance Abuse Treatment Program.

GCC administrators further explained that to notify prospective applicants of funding availability, the GCC advertises its Request for Proposals (RFPs) on the GCC website. The GCC also alerts stakeholder groups (e.g., victim service providers, the criminal justice and business communities, and other community-based organization and associations served by the Department) of funding opportunities through mailing lists and departmental newsletters. GCC members, who are comprised of cabinet appointees as well as individuals appointed by the Speaker of the North Carolina House of Representatives and by the President Pro tempore of the North Carolina Senate, then review and score the grant applications and make funding recommendations to the full commission for approval. The recommendation of the full

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commission is then forwarded to the Secretary of NCDCCPS and the Governor for final approval.

GCC administrators explained to the OCR that the GCC does not have any designated mechanism in place to advise members of the faith-based community regarding funding availability so as to maintain parity with how non-faith-based organizations are apprised of availability of funds. GCC administrators stated that they rely on the GCC's extensive mailing lists and word-of-mouth to keep faith-based organizations abreast of the grant opportunities available.

The OCR learned during the onsite visit that training on the Equal Treatment Regulations is provided at the above-mentioned annual Grant Award Workshop, which is mandatory for all grant recipients. Further, as discussed in Section I.A.1 above, most, but not all Special Conditions letters now contain assurances regarding the ETRs. Subsequent to the onsite visit, GCC officials informed the OCR that it intends to include language in its FY 2010 RFPs that puts subrecipients on notice of the ETRs' prohibition against using federal funds for inherently religious activities and discriminating against beneficiaries in the provision of services.

The GCC requires nonprofit applicants to obtain tax exempt status under 26 U.S.C. § 501(c)(3) in order to receive funds from the GCC. In its data request response, the GCC stated that this has been the method used by the GCC to establish non-profit status. During the onsite visit, members of the GCC staff conveyed their impression that this is required by law; this impression is fostered by the GCC's 2008 Grant Writing Workshop presentation forwarded to the OCR subsequent to the OCR's onsite visit, which states: "All non-profit agencies applying must be a current certification as a 501(c)(3) entity by the North Carolina Secretary of State Office and have a valid federal tax identification number in their possession at the time of application." (2009 Criminal Justice Improvement Committee, 2009 CJI Funding Priorities.) (emphasis in original).

Based on the GCC's data request response and the information that the OCR obtained during and subsequent to the onsite visit, the OCR understands that in fiscal year (FY) 2006, of six faith-based organizations that applied for DOJ funding, the following two organizations received funding: (1) the County of Beaufort received a two-year Juvenile Accountability Incentive Block Grant (JAIB) grant in the amount of \$30,967.24 for Project New Hope, a program that targets youth ages 10-17 referred by the juvenile court for educational and vocational skills development; and (2) Area Christians Together In Service, Inc., received a two-year VOCA grant in the amount of \$164,259.31 for Heart's Heaven, a program that provides domestic violence services such as shelter, crisis counseling, and referrals to victims and their dependent children. Each of these grants had project dates that began July 1, 2006, and ended June 30, 2008.

In FY 2007, of four FBOs that applied for federal funding, the following two received funding: (1) Covenant Prison Ministries received a two-year JAG grant in the amount of \$179,997.94 for its SCREEN program, which provides transitional services, including job training, housing, and mentoring for ex-offenders; and (2) Higher Level Missions, Inc., received a two-year Justice Assistance Grant (JAG) in the amount of \$172,742.36 for its Cabarrus Reentry Initiative program, which likewise provides reentry services and programming for ex-offenders, including transitional housing and employment services. Each of these grants had project dates that began July 1, 2007, and ended June 30, 2009.

In FY 2008, the following three faith-based organizations applied for and received federal funding: (1) a one-year VAWA grant in the amount of \$ 57,974.70 to The Greater Mt. Airy Ministry of Hospitality for Mary Sue's Safe Haven, a project that provides shelter, counseling, outreach, and referrals to victims of domestic violence, with a project date that began March 1, 2009, and ended June 30, 2009; (2) two VOCA grants to Area Christians Together in Service, Inc., for two different Heart's Haven's projects—the first, a two-year continuation of the previous 2006 grant in the amount of \$156,328.73 with a project date that began July 1, 2008, and ends June 30, 2010; the second, a one-year grant in the amount of \$2,200.00 for off-cycle shelter security with a project date that began July 1, 2008, and ended August 31, 2008; and (3) a one-year JAG grant in the amount of \$52,534.52 to Faith Seeds Community Re-Entry Coalition, Inc., for its Faith Seeds Community Re-Entry Emergency Funding, a program that provides ongoing support, employment training, counseling, financial literacy and social-integration skills for ex-offenders, with a project date that began February 1, 2009, and ended June 30, 2009.

In FY 2009, of the eight applicants who applied, five programs received federal funding: (1) Higher Level Missions, Inc., received a two-year JAG grant in the amount of \$ 359,923.22 for the Cabarrus Reentry Initiative; (2) Community Kingdom Building Ministries received a two-year JAG grant in the amount of \$81,526.85 for the Standing in the Gap Mentoring Program, which provides a structured mentoring program for youth ages 7-17 who are involved in the juvenile justice system; (3) Another Step Forward Ministries received a two-year JJDP grant in the amount of \$144,709.56 for its Adopt a School Program, which provides academic, mentor, vocational, and personal needs support for at-risk students, as well as professional development for teachers. Each of the above grants has project dates that began July 1, 2009, and end June 30, 2011. In addition, (4) Faith Seeds Community Re-Entry Coalition, Inc., received a one-year JAG grant in the amount of \$153,069.50 for the Faith Seeds Community Re-Entry Coalition Program; and (5) The Greater Mt. Airy Ministry of Hospitality, Inc., received a one-year VOCA grant in the amount of \$156,091.57 for Mary Sue's Safe Haven. Each of these grants has project dates that began July 1, 2009, and end June 30, 2010.

During the onsite visit, GCC grant administrators stated that from FY 2006 to the present, no issues arose regarding compliance with the Equal Treatment Regulations for any of the above-referenced grants.

2. Procedures for Ensuring that Faith-Based Organizations Comply with Applicable Federal Civil Rights Laws

As discussed in this Report, the GCC references the ETRs in some, but not all, of its Special Conditions letters, and it intends to include language on the ETRs' prohibition against using federal funds for inherently religious activities and discriminating against beneficiaries in the provision of services in its FY 2010 RFPs. Also discussed in this Report, during the onsite visit, GCC officials confirmed that grant recipients are trained on the ETRs during the GCC's annual Grant Award Workshop.

Although the GCC stated in its data request response that information is gathered to ensure that faith-based organizations are in compliance with the ETRs, it is not evident from the Grant Monitoring Site Visit Worksheet whether during onsite monitoring visits, GCC grant monitors ask subrecipients specific questions regarding their compliance with the ETRs or any other civil rights requirements; it also does not appear from the worksheet that grant monitors ask subrecipients if they need technical assistance in meeting their civil rights obligations.

II. Recommendations

The GCC already has some procedures in place for monitoring the civil rights compliance of its subrecipients, such as referencing some of the laws that the OCR enforces in some of its standard assurance documents. In order to strengthen the GCC's efforts to monitor the civil rights compliance of its subrecipients, the OCR offers the following recommendations: (1) develop a comprehensive policy, including the establishment of written procedures, for addressing discrimination complaints; (2) specify all potentially applicable statutorily-imposed nondiscrimination requirements in the GCC's Standard Grant Conditions Agreement; (3) monitor for compliance with additional civil rights requirements during onsite monitoring visits; (4) provide subrecipients with an EEOC certification form; (5) require all subrecipients to submit findings of discrimination to the OCR; (6) provide comprehensive training to DOJ subrecipients on the civil rights laws that the OCR enforces; and (7) allow subrecipients to demonstrate nonprofit status by any of the means identified in the DOJ's Equal Treatment Regulations.

A. Develop Comprehensive Complaint Procedures

Although the GCC has written procedures in place for receiving and investigating discrimination complaints from employees, the GCC does not have any procedures in place for addressing discrimination complaints from the employees and beneficiaries of GCC subrecipients. Accordingly, the GCC should adopt a policy for addressing discrimination complaints that includes, at a minimum, the following elements:

- 1) designating a coordinator who is responsible for overseeing the complaint process⁷;
- 2) notifying employees and subrecipients of prohibited discrimination in funded programs and activities and the GCC's policy and procedures for handling discrimination complaints⁸;
- 3) establishing written procedures for receiving discrimination complaints from subrecipient employees and beneficiaries;
- 4) referring each complaint to the appropriate agency for investigation and resolution, such as the U.S. Equal Employment Opportunity Commission or the North Carolina Office of Administrative Hearings (OAH); or referring the complaint to the OCR, which will review the complaint and work with the GCC to resolve the complaint;
- 5) notifying the OCR in writing when the GCC refers a discrimination complaint to another agency or when the GCC investigates the complaint internally; and
- 6) training GCC program staff on their responsibility to refer discrimination complaints or potential discrimination issues to the GCC's complaint coordinator for processing as soon as the alleged discrimination comes to their attention.

Information about the applicable laws, complaint forms, and the investigative process is available at the OCR's website at www.ojp.usdoj.gov/ocr/crc. Developing a comprehensive policy for addressing discrimination complaints should be a top priority for the GCC. We have enclosed sample policies for your consideration in developing your complaint procedures.

B. Specify All Potentially Applicable Civil Rights Laws and Implementing Regulations in the GCC's Standard Grant Conditions Agreement

As discussed in Section I.A.1 of this Report, currently, the GCC requires grantees to provide assurances that they and their subrecipients will comply "with all applicable civil rights nondiscrimination documents as set forth on the OJP Assurances Form 4000/3 (Attachment to Standard Form [SF] 424)." Rather than have grantees seek out additional information to determine what these statutorily-imposed requirements are, we recommend that the GCC supply grantees with a comprehensive list of these statutes and their implementing regulations in the GCC's Standard Grant Agreement. Thus, under the heading Certified Assurances (Non-Discrimination Requirements), in lieu of the language on page 5, the GCC should consider substituting the following language:

⁷ See 28 C.F.R. § 31.202(a)(1).

⁸ See 28 C.F.R. § 31.202(b)(3).

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Applicants must assure and certify that they will comply (and will require any subgrantees or contractors to comply) with any applicable statutorily-imposed nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (42 U.S.C. §10604(e)); The Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. § 5672(b)); the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131-34); the Education Amendments of 1972 (20 U.S.C. §§1681, 1683, 1685-86); and the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); see Ex. Order 13279 (equal protection of the laws for faith-based and community organizations).

The GCC should consider including a provision requiring subrecipients to certify that they will provide meaningful access to their programs and activities to those persons who may be LEP. In June of 2002, the DOJ issued guidance for its funding recipients and state subrecipients that addressed taking reasonable steps to provide meaningful access to funded programs and activities pursuant to Title VI and the Safe Streets Act. *See* Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41, 455 (June 18, 2002). We encourage you to visit www.lep.gov for additional information about how to provide meaningful access to your federally funded programs to LEP persons.

Additionally, the GCC may want to include a provision stating that in accordance with federal civil rights laws, the subrecipient shall not retaliate against individuals for taking action or participating in action to secure rights protected by these laws.

As discussed in this Report, the GCC is already including reference to the Equal Treatment Regulations in several of its grant documents. We recommend that the GCC strive for consistency by including reference to the ETRs in each of its Special Conditions letters. As also noted above, the GCC has represented to the OCR that its FY 2010 RFPs will also include a discussion of the ETRs. The GCC should be commended for this anticipated change in policy because subrecipients that apply for funding from DOJ components need to be aware of the obligation to comply with these regulations as early on in the application process as possible.

C. Monitor for Compliance with Federal Civil Rights Laws During Onsite Monitoring Visits

The GCC is taking steps to ensure that GCC subrecipients are complying with grant requirements by conducting periodic onsite monitoring visits. These onsite monitoring visits, however, do not appear to address federal civil rights laws. Pursuant to the GCC's responsibility to monitor the compliance of subrecipients with applicable federal civil rights laws, the GCC should add a civil rights component to its onsite monitoring visits. The GCC should consider expanding its existing Grants Monitoring Site Visit Worksheet to include questions relating to

EEOP requirements, the requirement to submit findings of discrimination to the OCR, whether the subrecipient has posted nondiscrimination notices as required by section 504 of the Rehabilitation Act, whether the subrecipient has a grievance procedure and a designated coordinator as required by section 504 of the Rehabilitation Act and Title IX of the Education Amendments of 1972, and whether the subrecipient is taking steps to provide meaningful access to its programs and activities to individuals with limited English proficiency (LEP). In addition, the worksheet should include questions on whether the subrecipient is complying with the Equal Treatment Regulations by not expending federal funding on inherently religious activities and not discriminating based on religion in the delivery of services, as well as whether the subrecipient needs training or technical assistance to comply with applicable civil rights laws. We have enclosed a sample Civil Rights Monitoring Checklist for your consideration in developing your monitoring procedures.

D. Provide Subrecipients with an EEOP Certification Form

As discussed in Section I.A.1 of this Report, the GCC's Standard Grant Conditions Agreement and preapplication documents currently advise subrecipients to submit an EEOP to the GCC "as required" by applicable law. This approach however, does not fully convey the EEOP requirements under 28 C.F.R. §§ 42.301-.308; nor does it relay sufficient information for an applicant to determine whether it is required to prepare and/or submit an EEOP to the OCR or simply complete the EEOP Certification form attesting it does not have to satisfy this requirement. We have enclosed a copy of the OCR's EEOP Certification Form that we require funding recipients to complete; this form contains detailed information concerning when funding recipients are required to prepare and file an EEOP, when they are required to submit an EEOP to the OCR, and when they are exempt from the EEOP requirement altogether. We recommend that the GCC prepare a similar form containing all of the relevant information that applicant subrecipients must complete and submit to the OCR and the GCC if they are not required to submit an EEOP.

E. Require All Subrecipients to Submit Findings of Discrimination to the OCR

As discussed in this Report, the GCC currently includes in some, but not all, of its Special Conditions letters the requirement that grant recipients submit findings of discrimination issued by a federal or state court or federal or state administrative agency on the basis of race, color, religion, national origin, sex, or disability to the OCR. Again, we recommend that the GCC strive for consistency by stating this requirement in each of its Special Conditions letters; alternatively, the GCC could revise the language contained in Section II.A of its Standard Grant Conditions Agreement to make it clear that a copy of such findings must be forwarded to the OCR, and not solely the GCC.

F. Provide Comprehensive Training to Subrecipients on Federal Civil Rights Laws

Other than providing a general discussion of the information contained in its standard assurances during its annual Grant Award Workshop, the GCC does not currently provide any formal training for its subrecipients about their civil rights obligations. To ensure that subrecipients are aware of their obligations under federal civil rights laws, such as the obligation to comply with the DOJ's Equal Treatment Regulations, to provide services to LEP individuals, and to provide the OCR with findings of discrimination issued by a federal or state court or federal or state administrative agency on the basis of race, color, religion, national origin, sex, or disability, the GCC should provide periodic training programs for its subrecipients on the applicable federal civil rights laws. The GCC should provide this mandatory training for every subrecipient at least once during a grant cycle, whether the GCC provides the training in person, during a teleconference, or through other means. The OCR is available to provide the GCC with technical assistance in developing civil rights training programs.

G. Allow Subrecipients to Demonstrate Nonprofit Status by Any of the Means Identified in DOJ's Equal Treatment Regulations

As discussed in Section I.B.1 of this Compliance Review Report, the GCC requires nonprofit organizations to obtain federal tax exempt status under 26 U.S.C. § 501(c)(3) to be eligible for DOJ funding. Unless 501(c)(3) status is required under the particular grant program (e.g., programs funded under the federal Juvenile Justice and Delinquency Prevention Act), the GCC should be mindful that applicants may also demonstrate nonprofit status by any of the following means identified in the DOJ's Equal Treatment Regulations: (1) proof that the Internal Revenue Service recognizes the organization as being tax exempt under 501(c)(3) of the Internal Revenue Code; (2) a statement from a state taxing body or state secretary of state certifying that the organization is a nonprofit organization and that no part of the organization's net earnings may benefit any private shareholder or individual; (3) a certified copy of a certificate of incorporation or similar document establishing nonprofit status; and (4) any of the above, if it applies to a state or national parent organization, with a statement by the state or national parent organization that the applicant is a local nonprofit affiliate. 28 C.F.R. § 38.1(g).

Conclusion

Except for the concerns we have raised in Section II of this Compliance Review Report, we find that the GCC has taken steps to substantially comply with the federal civil rights laws that the OCR enforces. On request, the OCR is available to provide technical assistance to the GCC in addressing the concerns raised in this Report. **Immediately upon receipt of this letter, we ask that a responsible GCC official contact Attorney Advisor Kimberly Scheckner to develop a timeline and goals for implementing the OCR's recommendations.** Thank you for your

Gwendolyn W. Burrell, Executive Director
Governor's Crime Commission
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cooperation and the assistance of your staff throughout the compliance review process. If you have any questions, please contact Ms. Scheckner at [REDACTED]

Sincerely,

/s/

Michael L. Alston
Director

Enclosures